

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0041P

Use Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a contractor. Taxpayer performs work both on a lump sum and a time and material basis. Taxpayer performed work for several Indiana companies in Indiana during the audit period.

At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items such as small tools, consumable supplies, and material incorporated into realty. The auditor allowed \$18,400 in tax credit for items the taxpayer erroneously paid.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the underpayment was inadvertent and it fully intended to pay the correct tax due.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use

such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to self assess and remit use tax on more than fifteen percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.